Re Chin Kwan Kee; ex p Shriro Paper (M) Sdn Bhd

HIGH COURT (KUALA LUMPUR) — BANKRUPTCY NO D2-29-1957 OF 1997
ABDUL AZIZ J
29 JULAI 1999

Bankruptcy *— Creditors petition — Application to strike out — Change of judgment debtor's address — Filing of petition in state other than state in which judgment debtor is resident — Whether invalidate petition — Whether non-compliance with rr 100(2) and 101(2) Bankruptcy Rules 1969*

The judgment debtor contracted a debt with the petitioner ('the creditor') while he was carrying on a business in Cheras, Federal Territory of Kuala Lumpur. He no longer carried on business at the address. As regards his residence, the address had been at all material times an address in Ampang, Selangor. Counsel for the judgment debtor argued non-compliance with rr 100(2) and 101(2) of the Bankruptcy Rules 1969. The petition should have described the judgment debtor — which it did not — as of his residential address in Ampang and as lately carrying on business at the address in Cheras. The petition was also filed in a State other than the State in which the judgment debtor was resident. The senior assistant registrar dismissed the judgment debtor's application for the striking out of the creditors' petition and hence the appeal.

Held, dismissing the appeal with costs:

Rule 100(2) does not apply to the judgment debtor here. As far as his residence is concerned, it has been the same at all material times. As far as the place of business is concerned, he was not a debtor who carried on business at an address other than his place of business at the contracting time, because he did not claim that he had been carrying on any business anywhere since May 1997 (see p 500A–B). Even if the petition was filed in the wrong State, the filing of a petition in a State other than the State in which the judgment debtor is resident does not invalidate the petition (see p 500E–F); *Re Dato Othman Bokhari; ex p Diners Club (M) Sdn Bhd* [1998] 4 CLJ Supp 315 followed.

[Bahasa Malaysia summary

Penghutang penghakiman telah berkontrak suatu hutang dengan pempetisyen ('pemiutang tersebut') semasa beliau menjalankan perniagaan di Cheras, Wilayah Persekutuan Kuala Lumpur. Beliau tidak lagi menjalankan perniagaan di alamat tersebut. Berkenaan dengan tempat kediamannya, alamatnya adalah pada semua masa matan di Ampang Selangor. Peguam untuk penghutang penghakiman telah berhujah ketidakpatuhan kk 100(2) dan 101(2) Kaedah-kaedah

Kebankrapan 1969. Petisyen tersebut sepatutnya menyatakan penghutang penghakiman — di mana ia tidak — alamat kediamannya di Ampang dan sejak akhir-akhir ini menjalankan perniagaan di alamat di Cheras. Petisyen juga telah difailkan di Negeri lain dari Negeri yang mana penghutang penghakiman mendiami. Penolong kanak pendaftar telah menolak permohonan penghutang penghakiman untuk memgketepikan petisyen penghutang dan dengan itu rayuan tersebut.

Diputuskan, menolak rayuan dengan kos:

Kaedah 100(2) tidak terpakai kepada penghutang penghakiman di sini. Sejauh berkenaan dengan kediamannya, ia adalah sama pada semua masa matan. Sejauh berkenaan dengan tempat perniagaannya, beliau bukanlah seorang penghutang yang menjalankan perniagaan di alamat yang lain daripada tempat perniagaannya pada masa berkontrak, kerana beliau tidak mendakwa bahawa beliau telah menjalankan perniagaan di mana-mana tempat sejak Mei 1997 (lihat ms 500A–B). Walau sekalipun petisyen tersebut difailkan di Negeri yang salah, pemfailan petisyen tersebut di Negeri yang yang selain daripada Negeri di mana penghutang penghakiman mendiami tidak tak sahkan petisyen tersebut (lihat ms 500E–F); *Re Dato Othman Bokhari; ex p Diners Club (M) Sdn Bhd* [1998] 4 CLJ Supp 315 diikut.]

Notes

For cases on creditors petition, see 1 *Mallal's Digest* (4th Ed, 1998 Reissue) paras 1626–1635.

Cases referred to

Dato Othman Bokhari, Re; ex p Diners Club (M) Sdn Bhd [1998] 4 CLJ Supp 315 (folld)

Legislation referred to

Bankruptcy Rules 1969 rr 100(2), 101(2)

Teh Cheng Aik (*Teh Cheng Aik & Co*) for the judgment creditors.
Amarjeet Singh (*Zubeda & Amarjeet*) for the judgment debtor.

Cur Adv Vult

Abdul Aziz J: The learned senior assistant registrar has dismissed the judgment debtor's application for the striking out of the creditors' petition in this case. The judgment debtor now appeals.

At the time that the judgment debtor contracted the debt in respect of which the petition was presented, he was carrying on a business in which he traded as Chinoon Enterprise at a place of business in Cheras, in the Federal Territory of Kuala Lumpur. According to him (para 6 of his

affidavit dated 6 January 1999 and para 5 of his affidavit dated 16 January 1999) since May 1997 he no longer carried on business at the Cheras address but he had forgotten to effect a change in the Registrar of Businesses concerning 'pindahan alamat perniagaan' because he was no longer giving attention to the business, which was no longer active. He did not say whether, or where, he was carrying on any other business.

As regards his residence, the address has been at all material times an address in Ampang, in the State of Selangor.

The creditor's petition was filed on 23 March 1998 in the High Court at Kuala Lumpur. It described the judgment debtor as of the Cheras address.

Those are the facts or averments that have a bearing on the sole ground, involving two points, relied upon by the judgment debtor in this appeal for contending that the creditors' petition ought to be set aside. The ground is non-compliance with rr 100(2) and 101(2) of the Bankruptcy Rules 1969. Rule 100(2) provides as follows:

> (2) Where a petition is presented against a debtor who resides or carries on business at an address other than his residence or place of business at the time of contracting the debt or liability in respect of which the petition is presented, the petitioning creditor shall describe the debtor as of his present address and description, and as lately residing or carrying on business at the address when the debt or liability was incurred.

Rule 101(2) provides as follows:

> (2) Where the debtor has for the greater part of one year immediately preceding the presentation of the petition carried on business in one State and resided in another State the petition may be filed in the Court of the State in which he has carried on business.

As I understand learned counsel for the judgment debtor, the point about rule 100(2) is that, in view of those facts and averments, the petition should, as required by the rule, have described the judgment debtor — which it did not — as of his residential address in Ampang and as lately carrying on business at the address in Cheras, being the judgment debtor's place of business at the time of contracting the debt in respect of which the petition was presented.

The rule applies in the case of a petition that is presented against 'a debtor who resides or carries on business at an address other than his residence or place of business at the [contracting] time'. I take the liberty of modifying the quote for the sake of brevity and easy comprehension, 'contracting' time being the time of contracting the debt or liability in respect of which the petition is presented. I think that in that quote 'resides' must be paired with 'residence' and 'carries on business' must be paired with 'place of business'. It would not make sense to pair 'resides' with 'place of business' or to pair 'carries on business' with 'place of residence'. On that basis, the quote is reducible to 'a debtor who resides at an address other than his residence at the contracting time or a debtor who carries on business at an address other than his place of business at the contracting

time'. The question, then, is: was the judgment debtor here such a debtor when the petition was presented on 23 March 1998? The answer is no. As far as his residence concerned, it has been the same at all material times. As far as place of business is concerned, he was not a debtor who carried on business at an address other than his place of business at the contracting time, because he did not claim that he had been carrying on any business anywhere since May 1997. So r 100(2) does not apply in the case of the judgment debtor here and no question of complying with it arises. The point about r 100(2) fails on its construction and on the judgment debtor's own averments, and I need not consider the question whether the averments are true, or the question of the applicability of the rule where the creditor does not know of the change in the debtor's residence or place of business, or the proper consequence of non-compliance with the rule.

As regards r 101(2), the submission of learned counsel for the judgment debtor was that since, for the greater part of one year immediately preceding the presentation of the petition, the judgment debtor was residing in the State of Selangor and was not carrying on business in the Federal Territory of Kuala Lumpur, the rule does not apply so as to enable the petition to be filed in Kuala Lumpur. The petition should, therefore, have been filed in the State of Selangor, where the judgment debtor had been residing. What the submission concerning r 101(2) amounts to is that the petition was filed in a State other than the State in which the judgment debtor was resident.

To dispose of the point of r 101(2), again I need not decide whether the judgment debtor had in fact ceased to carry on his business in Cheras since May 1997, because, even if the petition was filed in the wrong State, I am of opinion, as I was in *Re Dato Othman Bokhari; ex p Diners Club (M) Sdn Bhd* [1998] 4 CLJ Supp 315 and for the reasons that I gave in that case, that the filing of a petition in a State other than the State in which the judgment debtor is resident does not invalidate the petition.

I dismiss the appeal with costs.

Appeal dismissed with costs.

Reported by Benjamin Yong